IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 136 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

OIL & NATURAL GAS CORPORATION LTD.

Versus

VITHALBHAI PURSHOTTAMBHAI PATEL

Appearance:

1. Special Civil Application No. 136 of 2003
MR AJAY R MEHTA for Petitioner No. 1
MR KRUNAL D PANDYA for Respondent No. 1
MR AJ DESAI Ld. AGP for Respondent No. 2-3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. Heard Mr.A.R.Mehta, learned advocate for the petitioner, Mr. Kunal Pandya, learned advocate for respondent no.1 and Mr.A.J.Desai, learned AGP for respondent nos.2 and 3.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner - acquiring body has been challenging the legality of the order dated 11.12.2002 passed below Exh.63 in Land Acquisition Case No.660 of 1996 (Annexure-B), whereby the request of the acquiring body for adducing the secondary evidence, in absence of primary evidence, came to be rejected by the Reference Court in the proceedings under Section 35 of the Land Acquisition Act.

3. It is submitted by Mr.A.R.Mehta, learned advocate for the petitioner that vide application, Exh.63, the present petitioner - acquiring body prayed for adducing secondary evidence (Mark-56/1) as regards the calculation of the restoration charges as the primary evidence was not available, either lost or destroyed. In this regard, the petitioner has been relying on Section 65(C) of the Indian Evidence Act.

4. Mr. A.J.Desai, learned AGP representing respondent nos.2 and 3 has placed on record the affidavit in reply on behalf of respondent nos.2 and 3. In para.4, it has been stated that the original statement of restoration charges which was sent to Special Land Acquisition, Kheda is not available either with the Revenue Department, Gandhinagar or with the Special Land Acquisition Officer i.e. Deputy Collector, Kheda. In para.5, it has been stated that the deponent of the affidavit in reply has testified that he is gone through the record of the case of the present award from the office of Special Land Acquisition officer as well as from the office of the Revenue Department but, he could not find the same either with the offices. .....

5. As suggested from the petition and also submitted by Mr.Mehta, learned advocate for the petitioner that the original statement for the calculation of restoration charges is not available, either lost or destroyed and that is exactly what has been stated in the affidavit in reply filed by the respondent nos.2 and 3. It need hardly be said that in view of the provisions contained in Section 65(C) of the Indian Evidence Act when the

primary evidence is either lost or destroyed, the secondary evidence would be admissible in evidence.

Mr.Kunal Pandya, learned advocate for respondent no.1 - original claimant submits that there is no objection if the secondary evidence is permitted as regards the calculation of restoration charges and as secondary evidence, Mark - 56/1, would be admissible in evidence when the original / primary evidence is shown to be lost, destroyed or not available.

6. In view of the above legal position as above, the impugned order, Annexure-B, is liable to be quashed and set aside and petitioner entitled to lead secondary evidence, Mark - 56/1, as regards the calculation of restoration charges. The impugned order being illegal, is required to be interfered with.

7. In the result, petition is granted. The impugned order dated 11.12.2002, Annexure-B, is hereby quashed and set aside. Rule is made absolute with no order as to costs.

(N.G.Nandi,J.)

(D.A.Mehta,J.)

(vipul)